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MAY 19 2006

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

Case No. 05-17087-B-13

Jeanette Jackson,

DC No. PBB-2

Debtor.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON DEBTOR'S
OBJECTION TO CLAIM OF GENERAL MOTORS
ACCEPTANCE CORPORATION**

Peter B. Bunting, Esq., appeared on behalf of the debtor Jeanette Jackson (the "Debtor").

Donald H. Cram, III, Esq., of Severson & Werson, P.C. appeared on behalf of General Motors Acceptance Corporation ("GMAC").

M. Nelson Enmark, Esq., appeared in his capacity as the chapter 13 trustee (the "Trustee").

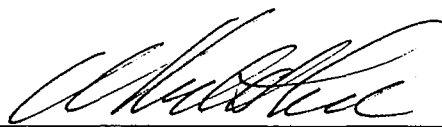
GMAC filed a proof of claim in this chapter 13 bankruptcy in the amount of \$14,893.13 (docket claim #4 - the "GMAC Claim" or the "Claim"). The collateral, a 2001 Chevrolet Blazer, is valued in the Claim at \$10,842.15. Under this court's General Order 03-03, ¶ 2(d), (applicable to chapter 13 cases filed before October 17, 2005), the amount of GMAC's secured Claim will be the collateral's value stated in the Claim unless and until the court fixes a different amount through a properly noticed motion. The Debtor does not object to the secured portion of GMAC's Claim. The Debtor objects to the unsecured portion of the Claim, approximately \$4,051, on the grounds that the unsecured Claim was discharged on July 28, 2005, in the Debtor's prior chapter 7 bankruptcy (case number 05-13020 - the "Prior Chapter 7"). For the reasons set forth below, the Claim objection will be overruled.¹

¹The Debtor's chapter 13 plan states in Section IV:

Note: Personal liability has been discharged on GMAC contract secured by 2001 Chevrolet Blazer. The amount paid to GMAC under Class 2 of this Plan is the fair market value.

1 The Claim objection focuses solely on the Debtor's discharge in the Prior Chapter
2 7, *i.e.*, the discharge injunction under 11 U.S.C. § 524 exonerates the Debtor from any
3 personal liability to GMAC on account of its Claim. However, the Debtor misses the
4 distinction between GMAC's Claim being a claim against the Debtor and a claim against
5 the estate. GMAC's Claim is secured by the automobile which is property of the estate,
6 ergo, the full amount of GMAC's Claim is a claim against the estate, notwithstanding the
7 Debtor's discharge in the Prior Chapter 7. *In re Gounder*, 266 B.R. 879, 881 (Bankr.
8 E.D. Cal 2001). GMAC's unsecured Claim is "entitled to be paid whatever sections
9 1325(a)(4) [the best-interests of creditors-test] and 1325(b) [the disposable income test]
10 require be paid to unsecured creditors, the prior chapter 7 discharge notwithstanding. . . .
11 That may be nothing or it may be 100%." *Id.* The court can find little to distinguish this
12 case from the *Gounder* case. Accordingly, the Debtor's Claim objection will be
13 overruled.

14 Dated: May 19, 2006

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18 W. Richard Lee
19 United States Bankruptcy Judge
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26 However, evidence in GMAC's opposition suggests that GMAC was not
27 properly served with timely notice of the plan and the confirmation hearing, which
28 raises the question of whether GMAC is bound by the confirmed plan at all. The Debtor
does not contend in this objection that the confirmed chapter 13 plan is binding on
GMAC as an adjudication of her liability, or its Claim.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

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U.S. Trustee
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DATED: 5-22-06

By: Barbara Mooradian
Deputy Clerk